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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/950,071	09/12/2001	Mike Farwick	212532US0X	1541

22850 7590 01/10/2002

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EXAMINER

FRONDA, CHRISTIAN L

ART UNIT PAPER NUMBER

1652

DATE MAILED: 01/10/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/950,071

Applicant(s)  
Farwick et al.

Examiner  
Christian L. Fronda

Art Unit  
1652



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-37 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-6, 10-22, and 26, drawn to an isolated polynucleotide, vector, host, and method for making a protein classified in class 435, subclass 69.1.
  - II. Claim 7, drawn to a method for detecting a nucleic acid by contacting a nucleic acid sample with a probe, classified in class 435, subclass 6.
  - III. Claim 8, drawn a method for producing a nucleic acid by contacting a nucleic acid sample with a probe, classified in class 435, subclass 6.
  - IV. Claim 9, drawn to a method for screening for polynucleotides which encode a protein having the activity of the RodA cell division protein by hybridization with a polynucleotide, classified in class 435, subclass 6.
  - V. Claim 23, drawn to a method for screening for polynucleotides which encode a protein having the activity of the RodA cell division protein by hybridization with a polynucleotide, classified in class 435, subclass 6.
  - VI. Claims 24, drawn to a method for detecting a nucleic acid by contacting a sample with a probe, classified in class 435, subclass 6.
  - VII. Claims 25, drawn a method for producing a nucleic acid by contacting a nucleic acid sample with a probe, classified in class 435, subclass 6.
  - VIII. Claims 27 and 28, drawn to a *Coryneform bacterium* comprising an enhanced *rodA* gene, classified in class 435, subclass 252.1.
  - IX. Claim 29, drawn to an *Escherichia coli* DSM 14312, classified in class 435, subclass 252.33.
  - X. Claims 30-34, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene, classified in class 435, subclass 106.

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- XI. Claims 30 and 35, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene and at least one gene selected from the group consisting of *dapA*, *gap*, *tpl*, *pgk*, *zwf*, *pyc*, *mgo*, *lysC*, *lysE*, *hom*, *ilvA*, *ilvBN*, *ilvD*, and *zwa1* is attenuated, classified in class 435, subclass 106.
- XII. Claims 30 and 36, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene and at least one gene selected from the group consisting of *pck*, *pgi*, *poxB*, and *zwa2* is attenuated, classified in class 435, subclass 106.
- XIII. Claim 37, drawn to an isolated polypeptide comprising the amino acid sequence of SEQ ID NO: 2, classified in class 530, subclass 350.

2. The inventions are distinct, each from the other because of the following reasons:  
Inventions of Groups I, VIII, IX, and XIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Each of the products of Groups I, VIII, IX, and XIII are independent chemical entities and require different literature searches.

Inventions of Groups II-VII and X-XII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Each of the processes of Groups II-VII and X-XII are distinct both physically and functionally; require different process steps, reagents, and parameters; have different purposes; and produce different products.

Each of the products of Groups VIII, IX, and XIII are unrelated to the processes of Groups II-VII, XI, and XII. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Each of the processes of Groups II-VII, XI, and XII do not require the products of Groups VIII, IX, and XIII.

Inventions I and (II-VII) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

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§ 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product such as using the polynucleotide in a recombinant process for the production of a polypeptide.

Inventions VIII and X are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product such as using the *Coryneform bacterium* in a recombinant process for the production of a polypeptide.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. The claims are generic to a plurality of disclosed patentably distinct species. Applicants are required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

For Group XI, the species are each of *dapA*, *gap*, *tpl*, *pgk*, *zwf*, *pyc*, *mgo*, *lysC*, *lysE*, *hom*, *ilvA*, *ilvBN*, *ilvD*, and *zwa1*. If this group is elected, then Applicants must elect only one gene for examination.

For Group XII, the species are each of *pck*, *pgi*, *poxB*, and *zwa2*. If this group is elected, then Applicants must elect only one gene for examination.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.


4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L. Fronda whose telephone number is (703)305-1252. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703)308-3804. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703)308-0196.

A response to this Office Action may be faxed directly to the Examiner whose Fax Number is (703)746-5036 in order to expedite prosecution.

CLF

  
PONNATHAPU ACHUTAMURTHY  
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